

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3  
4 - - -  
5  
6 ARTHUR G. GIRTON, Executor : CIVIL ACTION NO. 85-7180  
7 of the Estate of John R. :  
8 Gunsalus, :  
9 Plaintiff :  
10 :  
11 v. : Philadelphia, Pennsylvania  
12 : June 13, 1988  
13 THE AMERICAN TOBACCO CO., : 9:50 a.m.  
14 Defendant :  
15 MORNING SESSION - PART ONE  
16 JURY TRIAL - VOLUME FOUR  
17 BEFORE THE HONORABLE NORMA L. SHAPIRO, J.  
18 UNITED STATES DISTRICT JUDGE  
19  
20 - - -  
21  
22 APPEARANCES:  
23  
24 For the Plaintiff: THOMAS F. JOHNSON, ESQUIRE  
25 DANIEL CHILDS, ESQUIRE

1 THE COURT: Thank you.

2 (Witness excused.)

3 THE COURT: Who's the next witness, please.

4 MR. JOHNSON: Your Honor, the next witness is  
5 another physician. It will take a few minutes. Do you want  
6 to break now or shall we break after qualifications?

7 THE COURT: It will take a few minutes, you said?

8 MR. JOHNSON: He's -- he's not a short witness.

9 THE COURT: Well, the jury only came out at five  
10 after ten. I'd like to go a little longer, if you wouldn't  
11 mind.

12 MR. JOHNSON: That's perfectly all right with me,  
13 your Honor.

14 We call Dr. Stolloff.

15 IRWIN STOLOFF, Plaintiff Witness, Sworn.

16 THE COURT: Please be seated. Whoever is going to  
17 proceed, may do so. Is this your witness, Mr. Johnson?

18 MR. JOHNSON: Yes, it is, your Honor.

19 DIRECT EXAMINATION

20 THE COURT: All right.

21 BY MR. JOHNSON:

22 Q Dr. Stolloff, what is your profession?

23 A I'm a physician.

24 Q And how long have you been a physician?

25 A Since 1851.

1 Q And are you licensed to practice medicine in any of the  
2 United States?

3 A Pennsylvania.

4 Q And where do you presently maintain your office?

5 A 111 South 11th Street, Philadelphia.

6 Q And is that located in any of the hospitals here in  
7 Philadelphia?

8 A That's in the new Jefferson Hospital building.

9 Q Doctor, are you -- do you specialize?

10 A I'm in the division of oncology. It's a branch of the  
11 department of medicine.

12 Q And what is oncology?

13 A Tumor work, cancer.

14 Q Doctor, are you board certified in any specialty?

15 A Internal medicine.

16 Q And what does internal medicine cover?

17 A It covers most of the internal organs.

18 Q How long have you been part of the department of  
19 oncology?

20 A Since its beginning.

21 Q And when was that?

22 A Well, don't hold me to the year. I would guess 1965.

23 Q Doctor, are you familiar with an organization known as  
24 the American College of Chest Physicians?

25 A Yes.

1 Q And you are a member of that organization?

2 A I'm a member.

3 Q Approximately how long have you been such a member?

4 A I'd say 25 years.

5 Q Are you familiar with the Committee on Cancer of the  
6 American College of Chest Physicians?

7 A I am.

8 Q And are you a member of that committee?

9 A I am.

10 Q Approximately how long have you been a member of that  
11 committee?

12 A Oh, 20 years, 15, maybe.

13 Q Doctor, your principal -- what sort of patients do you  
14 principally see at this point in your practice?

15 A Well, I see a mix of cancer patients, people with  
16 pulmonary disease and other problems of internal medicine  
17 like diabetes, et cetera.

18 Q And, Doctor, have you published in the field of internal  
19 medicine and cancer?

20 A I have.

21 Q Approximately how many articles have you written?

22 A I think it's about 30.

23 Q And, Doctor, have you been qualified as an expert in the  
24 Eastern District of Pennsylvania on other occasions?

25 A I have testified before, yes.

1 Q And also in our State courts, have you been so qualified  
2 as an expert witness?

3 A That is correct.

4 MR. JOHNSON: Your Honor, I would offer this  
5 witness as an expert in the field of oncology and internal  
6 medicine.

7 THE COURT: Any questions, Mr. Mannino?

8 MR. MANNINO: Yes, your Honor.

9 VOIR DIRE EXAMINATION

10 BY MR. MANNINO:

11 Q Doctor, you're not board certified in oncology, are you?

12 A No.

13 Q You've been eligible to take that board exam since the  
14 1960s?

15 A No. The boards of oncology came after I had already  
16 started practicing oncology, so there would be no need for  
17 me to take boards.

18 Q You were recertified in 1970s as a internal medicine  
19 specialist?

20 A It was just a voluntary exam, that was all.

21 Q And you could have, if you chose, taken the exam for  
22 oncology at that time, could you not?

23 A As I told you, there was no need to do that.

24 Q But you could have taken it?

25 A I was already a practicing oncologist. It would be

1 pointless for me to --

2 Q I --

3 THE COURT: I'm sorry, Dr. Stoloff. Would you  
4 answer his question though, please.

5 BY MR. MANNINO:

6 Q You could have taken the oncology exam at that point,  
7 had you so desired; is that correct?

8 A At what point?

9 Q When you took your recertification in internal medicine?

10 A Well, I'm not really sure when the oncology boards were  
11 first offered, but when they were offered, they were offered  
12 to me as a grandfather-type of arrangement. In other words,  
13 I wouldn't have had to take the boards to be certified.

14 Q And you did not take the boards?

15 A There were no boards, I'm telling you.

16 THE COURT: So what you're saying that you could  
17 have taken them, but you didn't have to, and you could have  
18 been certified in oncology without taking the exam under a  
19 grandfather clause?

20 THE WITNESS: That is correct.

21 THE COURT: All right. Now, is your question did  
22 he get certified or did he take the exam or both?

23 BY MR. MANNINO:

24 Q Did you get certified?

25 A No.

1 Q Did you take the exam?

2 A No.

3 Q Occupational medicine, is there a board certification in  
4 that?

5 A I think there is now, yes.

6 Q Are you board certified in that?

7 A No.

8 Q Okay. You're not an epidemiologist; is that correct?

9 A What do you mean by that?

10 Q Are you board certified or do you have a degree in  
11 epidemiologist?

12 A Well, I think that's a very recent certification. No,  
13 I'm not certified.

14 Q You're not a radiologist; are you?

15 A A lot of things I'm not. No, I'm not a radiologist.

16 I'm not a plumber. I don't paint houses.

17 THE COURT: Dr. Stoloff, I know that since this is  
18 outside your profession the ways of the law may seem strange  
19 or difficult to you, but it will go much faster if you'll  
20 answer the questions.

21 BY MR. MANNINO:

22 Q Doctor, in terms of interpreting x-rays --

23 A Yes.

24 Q -- there is a position called a B-reader, capital B,  
25 reader; is that correct?

- 1 A I think so.
- 2 Q Yes. And that's a specialist, a person who is
- 3 particularly trained to read x-rays; is that correct?
- 4 A Well, I don't know what you mean by specialist. A
- 5 B-reader is somebody who takes an exam.
- 6 Q Is that the highest rating you can get in order to be a
- 7 person who is a specialist in reading x-rays?
- 8 A No, I think that's nonsense.
- 9 Q Well, what is the highest rating that you can get?
- 10 A I don't know what you mean.
- 11 Q As a radiologist.
- 12 A Simply being a radiologist is high enough.
- 13 Q Okay. What do you have to do, if you know, to become a
- 14 B-reader?
- 15 A Well, there's a booklet on standardization of reading
- 16 x-rays, and that's about all I know. I think people read
- 17 the booklet, look at the sample x-rays and take an exam if
- 18 they so choose.
- 19 Q Okay. Talking in terms of things that you're not, just
- 20 so that we can establish that, you're not a pulmonologist; is
- 21 that correct?
- 22 A No.
- 23 Q Not a psychiatrist?
- 24 A No.
- 25 Q Not a psychologist?



1 A No.

2 Q Not a toxicologist?

3 A No.

4 Q Never published any article on asbestos related disease,  
5 have you?

6 A Indirectly.

7 Q What do you mean by indirectly?

8 A I ran a chest x-ray unit for 20 years, as we saw  
9 asbestos related diseases, and I published my experiences  
10 running a chest x-ray unit. So, indirectly there were  
11 asbestos diseases.

12 Q When you ran that chest x-ray unit, didn't you have a  
13 certified radiologist on your staff who read the x-rays for  
14 you?

15 A Oh, that's true, yes.

16 Q Okay. Doctor, are you going to refer in your testimony  
17 to studies of asbestos workers that you had performed?

18 MR. JOHNSON: Objection, your Honor. Now, how can  
19 the doctor say what he is going to ask -- answer until I ask  
20 him the questions?

21 THE COURT: Sustained.

22 MR. MANNINO: All right. I'll address that later.

23 Thank you very much, Doctor.

24 Your Honor, again we have an objection to this  
25 witness.

1 THE COURT: I think you mean to the witness'  
2 testifying.

3 MR. JOHNSON: I didn't hear him --

4 MR. MANNINO: His expertise, his expertise.

5 MR. JOHNSON: I didn't hear what Mr. Mannino said  
6 when he was at the bar.

7 THE COURT: He said he had an objection to witness,  
8 but he admits he misspoke. He meant to his expertise about  
9 the areas --

10 MR. MANNINO: To his expertise.

11 THE COURT: -- in which you offered him to testify,  
12 which I believe you said was oncology and internal medicine,  
13 and not withstanding the various specialties in which Dr.  
14 Stoloff is not certified. Because of his background and  
15 experience in oncology and internal medicine, I will permit  
16 him to testify in those areas of his expertise.

17 MR. JOHNSON: Thank you, your Honor.

18 THE COURT: And at this point, we can take a break.

19 (Break is taken.)

20 (Sidebar discussion as follows:)

21 THE COURT: To avoid some anticipated objection to  
22 something, how about an offer of proof, so I can figure out  
23 what he is going to object to and stop the interruption of  
24 the witness.

25 MR. JOHNSON: He's going to testify about his

1 physical examination of John Gunsalus.

2 THE COURT: Okay.

3 MR. JOHNSON: His findings as contained in his  
4 report, and his prognosis, which was pretty --

5 THE COURT: Well, so that turned out to be  
6 accurate, because he died.

7 MR. JOHNSON: That's right. That's what he is  
8 going to testify to.

9 THE COURT: Well, we don't -- all right. I'll  
10 allow you to do that. When did he examine him?

11 MR. JOHNSON: I think '86.

12 THE COURT: Well, all right. Well, it doesn't  
13 exactly make him a genius to diagnose terminal cancer at  
14 that time, however, you can -- that's --

15 MR. JOHNSON: October '86.

16 THE COURT: All right. I'm sorry, I don't mean to  
17 treat lightly in this serious matter. Let me ask you, what  
18 is the nature of your objection to what you anticipate to be  
19 his testimony?

20 MR. MANNINO: It's hard to understand exactly what  
21 his testimony is going to be, your Honor. If he is going to --

22 THE COURT: As far as I can see --

23 MR. MANNINO: -- get into all of this asbestos  
24 stuff, there's a lot of cross-examination on it.

25 THE COURT: Well, it sounds like he's going to

1 testify, according to Mr. Johnson, as a fact witness. He  
2 saw him, he did a history, he did a physical, he made a  
3 diagnosis, and it turned out his diagnosis was correct.

4 MR. JOHNSON: Prognosis, I --

5 MR. MANNINO: Prognosis, yes.

6 THE COURT: Well, prog -- diagnosis and prognosis.

7 MR. JOHNSON: That's right.

8 THE COURT: He had to make a diagnosis before he  
9 made a prognosis.

10 MR. JOHNSON: Sure..

11 MR. MANNINO: Is he going to get into asbestos a  
12 lot, I presume?

13 MR. JOHNSON: No.

14 MR. MANNINO: Because that is what his report's  
15 about.

16 MR. JOHNSON: No, it's not --

17 THE COURT: All right. Well, he doesn't -- he  
18 doesn't have to get him to testify to everything he said in  
19 his report, as I'm sure you know.

20 MR. MANNINO: Right.

21 THE COURT: All right. I will make every effort to rule fro  
Illegal width.

Printout terminated by system.

1 testify, according to Mr. Johnson, as a fact witness. He  
2 saw him, he did a history, he did a physical, he made a  
3 diagnosis, and it turned out his diagnosis was correct.

4 MR. JOHNSON: Prognosis, I --

5 MR. MANNINO: Prognosis, yes.

6 THE COURT: Well, prog -- diagnosis and prognosis.

7 MR. JOHNSON: That's right.

8 THE COURT: He had to make a diagnosis before he  
9 made a prognosis.

10 MR. JOHNSON: Sure..

11 MR. MANNINO: Is he going to get into asbestos a  
12 lot, I presume?

13 MR. JOHNSON: No.

14 MR. MANNINO: Because that is what his report's  
15 about.

16 MR. JOHNSON: No, it's not --

17 THE COURT: All right. Well, he doesn't -- he  
18 doesn't have to get him to testify to everything he said in  
19 his report, as I'm sure you know.

20 MR. MANNINO: Right.

21 THE COURT: All right. I will make every effort to rule from  
22 the bench anticipating without constant sidebars.

23 MR. MANNINO: I have objected very little to  
24 almost anything, your Honor.

25 THE COURT: I'm not criticizing. I will ask you,

1 though, I appreciate that you were busy over the weekend,  
2 but you too have a staff. When you bring witnesses to the  
3 stand, would you kindly instruct them that they have to  
4 answer questions both of the lawyer who called them, and  
5 opposing counsel. And if they would answer the question  
6 simply and directly, if they're offended by the cross, you  
7 can get it straight on redirect.

8 MR. MANNINO: It's okay with him, your Honor. He  
9 is a professional. He's testifies once a month.

10 THE COURT: You have a whole -- you have a whole  
11 series of witnesses who were just fencing, and I fault you  
12 for that, because you should prepare them and tell them that  
13 it's a judge that books no nonsense, and what they get away  
14 with some places, they will not get away with in my court.  
15 That we will have a fair trial by having you ask questions,  
16 preferably in a non-leading manner, and having him cross,  
17 doing what a cross-examiner is entitled to do, and then I  
18 will allow you redirect. I gave Mr. Shein some leeway  
19 because the direct was long ago. But he can't just adduce  
20 his whole -- his whole direct on redirect. Redirect  
21 generally has to be responsive to cross, and the recross to  
22 the redirect. Okay.

23 MR. MANNINO: Thank you, your Honor.

24 THE COURT: You know, it is -- I start out Monday  
25 morning very patient, but as the week wears on, I get

1 increasingly inpatient. Experienced lawyers who are just  
2 pushing the Court to see how far they can go. That was okay  
3 when I first came to the bench, but not after ten years.

4 Thank you.

5 MR. MANNINO: Thank you, your Honor.

6 THE COURT: Thank you.

7 (Sidebar discussion concluded.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (Discussion off the record.)

2 (Jury in at 11:23 a.m.)

3 THE COURT: Be seated.

4 And Mr. Johnson, you may proceed with the direct  
5 testimony of the doctor.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. JOHNSON:

8 Q Doctor, at my request did you perform a physical  
9 examination of John Gunsalus?

10 A Yes.

11 Q And when did you perform that examination?

12 A October 16, 1986.

13 Q And did you have certain information that was provided  
14 to you by my office at the time of the examination?

15 A I did.

16 Q What information was that?

17 A Well, there are VA Hospital summaries, an X-ray report  
18 of Mr. Gunsalus' chest from the month prior to my exam and a  
19 detailed work history.

20 Q And, Doctor, did you -- from the VA medical records,  
21 what did you observe about Mr. Gunsalus' condition before  
22 you saw him?

23 A I knew that he had a small cell carcinoma of the lung; a  
24 diagnosis was made by an endobronchial biopsy. He also had  
25 metastases, spread of the tumor to the brain and the liver,



1 and that he was being treated with radiation and  
2 chemotherapy, surgery having been ruled out.

3 Q Do you know, what's an endobronchial biopsy?

4 A A tube is put into the airway and if a tumor is  
5 visualized, a snip of it is taken, sent to the pathology  
6 lab. That's how the diagnosis was made in this instance.

7 Q Now, when you performed this examination on Mr.  
8 Gunsalus, did you take his weight?

9 A Yes, I did.

10 Q How much did he weigh?

11 A Well, let me check. 160 pounds.

12 Q Did you obtain any information from Mr. Gunsalus  
13 concerning any previous amount he had weighed?

14 A He told me that he'd lost about 50 pounds.

15 Q Is that consistent with carcinoma of the lung?

16 A Yes.

17 Q Why is there weight loss?

18 A It's a very oppressive disease, ruins the appetite,  
19 causes pain and distress, and most people don't eat well.  
20 And in addition he didn't metabolize well because he had  
21 spread to his liver and that's a main organ in metabolizing  
22 foodstuffs.

23 Q Now, how did you go about conducting your examination of  
24 Mr. Gunsalus?

25 A Well, we looked at the exterior, took his blood pressure

1 and pulse, examined his head and neck, heart and lungs, did  
2 a rectal exam, extremities, took an electrocardiogram and an  
3 office spirometric study, and then reviewed his X-rays.

4 Q Now, Doctor, did you take a history of current  
5 symptomatology from the patient?

6 A I did, yes.

7 Q What did you find?

8 A Well, he told me that he was having chest pain, that it  
9 was while taking deep breaths and constant. I made a note  
10 that it didn't -- wasn't effort pain, so I didn't think it  
11 was angina. He said he was tired, he had pains in his back  
12 and legs, and he was short of breath after walking three  
13 blocks slowly and one flight of stairs. He had a cough for  
14 the preceding ten months, he told me about his weight which  
15 we just reviewed. He was constipated, he thought from  
16 taking Percoset, which is a codeine-like drug that often is  
17 associated with constipation.

18 Q What was the purpose of Percoset?

19 A Percoset was for pain relief.

20 Q And is one of the side effects of Percoset constipation?

21 A Yes.

22 Q The chest pain that you mentioned, you said was not  
23 effort dependent. What does that mean?

24 A That was not after effort and was associated with  
25 breathing and it was a pleuritic type of pain, which I think

1 probably came from the tumor.

2 Q How is that -- could you explain how that occurs?

3 A Well, the tumor invades the lining of the lung and the  
4 lining of the lung has many sensitive nerve endings and  
5 usually produces pain on deep breathing, which we call  
6 pleurisy. That was the quality of the pain he was  
7 describing.

8 Q And what treatment is available for that sort of pain?

9 A Well, tumor treatment and Percoset, which is a  
10 pain-relieving medication.

11 Q Doctor, when you examined Mr. Gunsalus, what did you  
12 observe?

13 A Well, he had no hair on his head, except for a small  
14 amount of fuzz, which we often see on people who are on  
15 chemotherapy. There was a scar right above the trachea, I  
16 assume was due to an endoscopic examination.

17 Q Why did you make that assumption?

18 A Well, that's the location of that scar, it was right on  
19 the base of the neck and it usually is a site where a  
20 mediastinoscope was introduced.

21 Q Is that the same thing as the biopsy that you described  
22 earlier?

23 A Well, that's a different area.

24 Q What other --

25 A Well, he had a right antecubital scar, that was in his

1 elbow, which was a site of a cardiac catheterization.

2 Hearing was all right, eye examination was normal, he wore  
3 dentures. There were some tattoos of the skin, a vertical  
4 abdominal scar and a left submammary scar, which he told me  
5 was a stab wound.

6 Q Where was that located? You have used the medical  
7 terminology. Could you indicate --

8 A Yeah, it was in the left, under the left nipple. They  
9 were -- the lungs were fairly clear, which is surprising,  
10 but they were, and the liver could not be felt, it was not  
11 enlarged. Right leg was shorter than the left from a  
12 previous accident. There was a six-inch scar over the right  
13 knee; I think that was the surgery from that accident.

14 Rectal examination was normal, no blood in the stool.

15 Q Doctor, you indicated that an electrocardiogram was  
16 done?

17 A Yes.

18 Q What were the results of that? Perhaps before I ask you  
19 that, I should ask you what does an electrocardiogram  
20 measure?

21 A Well, it measures the electrical conductivity of the  
22 heart and one can get an idea of the heart rhythm, but in  
23 pulmonary cases one looks for evidence of chronic pulmonary  
24 disease such as right-sided heart failure, et cetera, or  
25 enlargement of the right side of the heart, and in his case,

1 he was talking about a cardiac catheterization, cardiac  
2 catheterization for coronary disease and there was no  
3 evidence of any abnormality on his cardiogram.

4 Q Did you also do spirometry?

5 A Yes.

6 Q What is spirometry?

7 A It is a measure of lung function; you take a deep breath  
8 and record how much air the lungs hold and the amount of air  
9 flow, the speed of air flow, during rapid blowing out of  
10 air.

11 Q And what were the findings that were made as a result  
12 of the spirometric tests?

13 A Well, he had a moderately severe defect; his vital  
14 capacity was 51 percent of normal. The amount of air he  
15 blew out in the first second was 51 percent of predicted and  
16 the amount of air he could blow out in the mid cycle was 47  
17 percent of predicted.

18 Q What did you conclude from that?

19 A I concluded that he had small and large airways  
20 obstruction and restricted disease of the lung.

21 Q Now, did you also do blood chemistries?

22 A Yes.

23 Q What was the purpose of doing those?

24 A Well, I knew that he was said to have had liver  
25 metastases so I wanted to see how his liver function was, to

1 see if that accounted for fatigue and weight loss, and I was  
2 checking his blood count and I knew that he'd been taking  
3 chemotherapy and a severe anemia could account for his --  
4 some of his symptoms.

5 Q Why did you -- why did you concern yourself with that?

6 A He told me that he was weak, short of breath and losing  
7 weight, and my interest was to see if we could get a clue  
8 about the cause of these symptoms.

9 Q How does the chemotherapy tend to lead to anemia?

10 A It suppresses the bone marrow function and in doing so  
11 suppresses blood cell production.

12 Q And what did you find as a result of the blood  
13 chemistries that you ordered?

14 A He did have a moderate anemia. However, it wasn't  
15 enough to account for his symptoms. His hemaglobin was 10.9  
16 and the normal is 13, so he wasn't in a severe range; I  
17 would say that it probably didn't account for his symptoms.  
18 His white count was a little low and that's consistent with  
19 recent chemotherapy, but that was about -- call it a  
20 functional level. He could get by with a white count of  
21 2100, with the normal being 5,000.

22 Q Why would you concern yourself with white blood count in  
23 an individual such as this?

24 A Well, people who are taking chemotherapy have  
25 suppression of the white count. If it's severe enough,

1 they're infection prone.

2 Q Perhaps it would make it easier for the jury if you  
3 would explain very briefly what the white count -- what the  
4 function of the white blood cells is.

5 A Well, the white cells protect against bacterial  
6 infection, at least as one of the functions, and if the  
7 white count drops below a thousand, that usually is a red  
8 flag for people getting chemotherapy and those patients are  
9 watched very carefully.

10 Q Doctor, did you take an occupational history with  
11 respect to asbestos exposure?

12 A Yes, I took an occupational history.

13 Q Would you describe for the jury what you were told  
14 concerning his exposure at Sun Ship?

15 A I can tell you first what he told me, that he worked as  
16 a laborer, he said that he was a bystander to insulators,  
17 that he worked around them. That he was often -- this was  
18 between the years 19, let's see, '60 and '66, and that he  
19 worked near pipefitters and was often covered with asbestos.

20 Q Doctor, have you ever taken an occupational history from  
21 anybody who worked at a shipyard?

22 A Many times.

23 Q Sun Shipyard?

24 A Many, many times.

25 Q And was the history that you were given by him

1 concerning his exposure at Sun Ship remarkably different  
2 than had been given by any of the other people you've spoken  
3 to?

4 MR. MANNINO: Objection as leading, your Honor.

5 THE COURT: Sustained.

6 BY MR. JOHNSON:

7 Q How did that compare with any previous histories you  
8 have taken from people at Sun Ship?

9 A Well, I considered this a significant asbestos exposure.

10 THE COURT: You mean only in regard to asbestos  
11 exposure or do you mean whether they're men and women or  
12 their ages or -- you're talking about the asbestos exposure?

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 BY MR. JOHNSON:

16 Q Did you inquire concerning his smoking history?

17 A I did.

18 Q And did you find out when he began smoking?

19 A He said at age 10.

20 Q And was he smoking at the time that you -- he was in  
21 your office?

22 A Well, he wasn't smoking in my office, we try to prevent  
23 that, but he was smoking.

24 Q And did you determine on an average how much he had  
25 smoked since age 10?



1 A He told me he averaged two packs a day.

2 Q And did you discuss with him the subject of smoking  
3 cessation?

4 A Yes, I did. He said that he craved cigarettes and was  
5 unable to stop for more than an hour. He told me that he  
6 tried the nicotine-impregnated gum and that failed and as he  
7 said it, if he tried to stop he tired and became anxious and  
8 nervous and he said he was hooked on cigarettes.

9 Q Did you also discuss use of alcohol with him?

10 A I did.

11 Q And had there been times -- well, what did he relate to  
12 you?

13 A Well, he told me that he had periods of time that he was  
14 a heavy drinker, that he denied being an alcoholic, said he  
15 was able to control his alcohol drinking. A lot of people  
16 say that.

17 Q Did you -- were you able to glean from the records that  
18 you had the manner in which the cancer had responded to  
19 chemotherapy?

20 A Not feeling an enlarged liver and lymph nodes and  
21 hearing a clear chest, I would say that he had a nice result  
22 up to that point.

23 Q With respect to Mr. Gunsalus, after you finished his  
24 examination, what prognosis did you see in his case? Did  
25 you need to make that call immediately?

1 A No, no, that's all right. I apologize. I'm sorry, I  
2 missed your question.

3 Q After completion of your examination of Mr. Gunsalus,  
4 did you reach an opinion as to his prognosis?

5 A Yes.

6 Q What was his prognosis?

7 A Well, I know that small cell carcinoma of the lung, it  
8 carries a terrible prognosis and that only about five or ten  
9 percent of them live for two years or more. So I think I  
10 expressed an opinion in the letter to you that his prognosis  
11 was very poor, despite the fact that he seemed to have been  
12 responding up to that point.

13 Q And did you express an opinion as to whether or not he  
14 would live out a normal life span given the fact he was 55  
15 years of age at the time you saw him?

16 A I thought he would not live a normal life span, if I had  
17 to predict.

18 Q Other than the one occasion on which you examined him,  
19 did you examine him on any other occasions?

20 A No.

21 MR. JOHNSON: Cross-examine.

22 MR. MANNINO: Your Honor, may we approach the bench  
23 before we begin our cross-examination?

24 THE COURT: Yes.

25 (Sidebar discussion held on the record as follows:)

1 MR. MANNINO: We can't read the copies of the  
2 records. Can we get the originals while I'm questioning?

3 MR. JOHNSON: Sure. Here's one example.

4 THE COURT: All right. Where are the originals?

5 MR. MANNINO: He has them. And I'll start my examination.

6 MR. JOHNSON: Can I get a copy of his answer?

7 MR. MANNINO: Sure.

8 THE COURT: Or you can exchange.

9 (End of sidebar discussion.)

10 THE COURT: There is some trouble with the  
11 reproductive process in regard to your records. Will you  
12 give Mr. Mannino the original of your records and we'll give  
13 you a copy and hope that since they're your records, you can  
14 guess what they say better than he can.

15 And if you can't read the copy, you say so, and  
16 we'll have you both look at the original together.

17 CROSS-EXAMINATION

18 BY MR. MANNINO:

19 Q Doctor, I'm going to start and have someone else review  
20 those records so that we don't waste anybody's time here.  
21 Can we agree, Doctor, that you spend a great deal of your  
22 time testifying in court?

23 A No, we don't agree to that.

24 Q How often do you do that, sir?

25 A Once a month, perhaps.

1 Q Do you have quite a few asbestos workers who were  
2 referred to you by lawyers as patients?

3 A Well, I'd say I have some, yes.

4 Q Do you have approximately 250 to 300 who have been  
5 referred to you by lawyers?

6 A Probably.

7 Q And is Mr. Johnson's law firm one of the people that --  
8 one of the law firms that sends you patients?

9 A Yes.

10 Q You do quite a few tests on those including physical  
11 exams, spirometric studies, chest X-rays, hemacults of the  
12 stool, is that correct?

13 A Pretty much as I have described for Mr. Gunsalus.

14 Q Could we agree that you make about \$35,000 a year on  
15 doing those tests on asbestos patients --

16 MR. JOHNSON: Objection, your Honor.

17 BY MR. MANNINO:

18 Q -- referred to you by law firms?

19 THE COURT: The -- whether they are aware or not is  
20 irrelevant but he can certainly exposure bias occasioned by  
21 financial matters. Therefore, would you rephrase the  
22 question?

23 BY MR. MANNINO:

24 Q Sir, does it influence your opinion in cases that you  
25 receive a great deal of money from treating asbestos

1 patients?

2 MR. JOHNSON: Objection.

3 THE COURT: I'll sustain the objection. A great  
4 deal of money is in the eyes of the recipient or the payer,  
5 I suppose. It's not sufficiently definite. You can ask --  
6 my objection to the form of your last question was that you  
7 asked could you agree. Why don't you just ask him if he got  
8 that amount and then if you want to quantify it in some way,  
9 I'll permit the question.

10 BY MR. MANNINO:

11 Q How much do you receive from your treatment of asbestos  
12 patients sent to you by lawyers?

13 A I don't know; I've never broken my income down that way.

14 Q How much does an average office visit cost when one --  
15 an asbestos worker comes into your office and you do various  
16 tests for that asbestos worker?

17 A I'd say about 100, \$150.

18 Q And how many of those would you say that you do in a  
19 year?

20 MR. JOHNSON: Objection. Does that mean office  
21 visits, asbestos cases, asbestos cases sent by attorneys?  
22 The question is unclear.

23 BY MR. MANNINO:

24 Q Examinations of asbestos patients in your office which  
25 are asbestos patients referred to you by plaintiff's

1 lawyers?

2 A By plaintiff's lawyers? Well, it's under a hundred, I  
3 would think, yes.

4 Q And your testimony, sir, who had been the parties that  
5 you have testified for in court? Do you specialize in  
6 representing one side rather than the other?

7 A No. I...

8 Q Who do you represent?

9 A In this case? I represent--

10 Q No, no, no. Who do you typically testify on behalf of,  
11 plaintiff, defendant --

12 A Well, I think the plaintiffs have called me. It's only  
13 because I don't hear from defendants.

14 Q You actually testify, I think you said, about once a  
15 month?

16 A Well, that may be a little too much. I have been in  
17 court maybe three times this year; that will probably help  
18 you.

19 Q Okay. Do you charge \$250 an hour to testify in court?

20 A That is correct.

21 Q Now, Doctor, are you giving an opinion as to what caused  
22 Mr. Gunsalus' cancer?

23 MR. JOHNSON: Objection, your Honor.

24 May we see you at sidebar?

25 THE COURT: Yes.

1 (Sidebar discussion held on the record as follows:)

2 MR. JOHNSON: Your Honor, I could have sworn that I  
3 did not ask him any opinion as to what caused his cancer.  
4 Now he's asking are you giving an opinion.

5 THE COURT: And the answer is no, he didn't give an  
6 opinion.

7 MR. JOHNSON: On direct he didn't.

8 THE COURT: That's right, that's what I said.

9 MR. MANNINO: I'm not going to ask the question.  
10 I just want the jury to understand that.

11 THE COURT: He has a right to point out that he  
12 gave his exam or prognosis and he didn't offer an opinion as  
13 to cause. So he's trying to -- so it's simply yes or no.

14 MR. MANNINO: That's right. I'm not going to ask  
15 him --

16 THE COURT: And why don't you say did you give the  
17 opinion in your testimony. Part of it is because maybe he  
18 did give an opinion and the like, but it was not elicited on  
19 direct, and he can't cross on what his opinion is. But he  
20 can point out that he did not express an opinion, although  
21 of course he could point that out to the jury that he didn't  
22 ask him the question. In closing, I mean.

23 (End of sidebar discussion.)

24 THE COURT: Do you want to rephrase the question,  
25 Mr. Mannino?

1 BY MR. MANNINO:

2 Q Doctor, didn't you in your testimony this morning give  
3 an opinion as to what caused Mr. Gunsalus' cancer?

4 THE COURT: And that's a yes or no answer.

5 THE WITNESS: This morning? No.

6 BY MR. MANNINO:

7 Q I believe you testified that Mr. Gunsalus told you that  
8 he had been occupationally exposed to asbestos between 1960  
9 and I believe you said 1966, is that correct?

10 A He told me five to six years, so I added the two  
11 together and got 56.

12 Q Okay. Do you know from your reference to any record  
13 whether Mr. Gunsalus was working in the Philadelphia area  
14 after 1965?

15 A Well, if you'll give me a second, I'll --

16 Q Certainly.

17 (Pause.)

18 A I have the work history that I received from Mr.  
19 Johnson, and that describes things for us.

20 Q And what does that say with respect to asbestos exposure  
21 in the period 1960 through 1966?

22 A Well, it doesn't say anything between '60 and '66. It  
23 says he worked at Ford Motor '57 to '60 and Congoleum Nairn,  
24 Incorporated, '65 to '66. Let's see, Sun Ship Drydock, '60  
25 to '62.



1 Q All right, so in other words, with respect to your  
2 testimony on Sun Ship, can we agree that that was not 1960  
3 through '66, but rather some portion of the period between  
4 1960 and 1962?

5 A Yeah, I would accept that, sure.

6 Q Do you know if Mr. Gunsalus was someplace other than at  
7 work during part of the period of 1962?

8 MR. JOHNSON: Objection, your Honor.

9 BY MR. MANNINO:

10 Q Do you know if he worked for the full period between  
11 1960 and 1962 at Sun Ship?

12 THE COURT: You can answer that question yes or no.  
13 The prior objection I didn't need to rule on because the  
14 question was withdrawn.

15 THE WITNESS: Let's hear the question again,  
16 please?

17 BY MR. MANNINO:

18 Q Do you know if Mr. Gunsalus actually worked at Sun Ship  
19 for the entire period starting January 1, 1960 and ending  
20 December 31st, 1962?

21 A No, I don't know the precise months that he worked.

22 Q You also mentioned, Doctor, that you observed shortness  
23 of breath in Mr. Gunsalus, is that correct?

24 A That's correct.

25 Q Hadn't he had a prior history of shortness of breath

1 before you saw him?

2 A Prior to what years?

3 Q Back in the 1970's?

4 A Well, I don't know how far back it went. He told me  
5 that he was short of breath in recent times.

6 Q Do you know how far back his shortness of breath  
7 condition had lasted?

8 A No.

9 Q You also mentioned that you did some work on Mr.  
10 Gunsalus with a spirometer. Am I pronouncing that  
11 correctly?

12 A Yes.

13 Q Can we agree that that does not measure residual volume  
14 in the lungs?

15 A This spirometry test did not measure residual volume  
16 amounts.

17 Q So if there is an obstruction, would be from a tumor,  
18 would the results of the spirometer give you the right  
19 readings with respect to what is left in the lungs?

20 A Well, it depends on what you're asking me. If you're  
21 asking me how much did the tumor contribute to the  
22 spirometric results, I could probably say very little  
23 because I didn't see very much tumor on the chest X-ray.

24 Q Well, let's do it this way, Doctor, isn't it true that  
25 the tumor was in the airway?

1 A As I understand it, the tumor was in the airway, it was  
2 biopsied in the airway and it was confined to the right  
3 upper lobe.

4 Q And that would prevent Mr. Gunsalus from exhaling  
5 normally, namely that the airway was blocked at least in  
6 part by the tumor?

7 A Well, you see, the right upper lobe is only one-fifth of  
8 the lobes of the lung, so it might account for 20 percent  
9 reduction if it were completely blocked, but --

10 Q All right.

11 A The evidence was that it was not completely blocked --

12 Q But we --

13 A -- at the time the bronchoscopic exam was done.

14 Q But we can agree that at least part of the results would  
15 be affected by the fact that part of the airway was blocked  
16 by the tumor; is that correct?

17 A I'd say if the right upper layer were completely  
18 blocked, and that's debatable, that that would account for a  
19 20 percent reduction. However, he had a 49 percent  
20 reduction, so we have to invoke some other explanation.

21 Q You mentioned that he had an accident to his left leg.  
22 Do you know the cause of that?

23 A No, I didn't question him much about his accident. I  
24 know it was old and that he had a limp, and that his -- I  
25 believe it is the right leg was shorter than the left.

1 Q Have you reviewed more than one x-ray report?

2 A No, I don't believe so.

3 Q You mentioned having reviewed an x-ray report that was  
4 done one month before. Was that Dr. Steiners report?

5 A Yes.

6 Q And that's the only x-ray report you reviewed?

7 A That's right. Well, there were reports on the -- the VA  
8 record that I read.

9 Q The detailed work history, did you tell us that that was  
10 prepared by Mr. Johnson's law firm?

11 A Well, I told you that I took a work history and then I  
12 also received a detailed work history from Mr. Johnson.

13 Q You mentioned that Mr. Gunsalus told you that he  
14 averaged two packs a day. Could you tell me what period he  
15 was talking about when he said he averaged two packs a day?

16 A No, I'm not sure what period he was talking. I think he  
17 was talking about recent years, and I would only have to  
18 speculate here. I know he was a smoker since age ten, that  
19 he continued to smoke, and I asked him about how much, and  
20 that's what he said.

21 Q But you don't know whether or not that was for his full  
22 smoking history, two packs a day?

23 A That's correct.

24 Q Okay. With respect to various documents such as Mr.  
25 Gunsalus' deposition, either his written deposition or his

1 videotaped deposition, did you have occasion to review  
2 those?

3 A No.

4 Q Okay. Did you have occasion to review all of his  
5 medical records?

6 A No. I -- well, I reviewed the VA Hospital records  
7 pertinent to his lung cancer.

8 Q You also mentioned that Mr. Gunsalus had told you that  
9 he was not an alcoholic, but he was a heavy drinker; is that  
10 what I understood you to say?

11 A He said on occasion that -- that he was a heavy drinker,  
12 and he denied being an alcoholic.

13 Q And you made some comment about a lot of people do that  
14 or something?

15 A Well, it's true that people will say that.

16 Q Did you reach any conclusion that was relevant to your  
17 physical examination regarding his use of alcohol?

18 A Well, he wasn't drunk at the time I saw him and there  
19 were no side effects of alcohol that I witnessed.

20 Q How long did Mr. Gunsalus live after the first  
21 presentation of his lung cancer?

22 A I believe he was diagnosed in April '85 and he died  
23 October '87, I believe.

24 Q I believe he died June of '87.

25 A '87.

1 Q That's two years and two months?

2 A That is correct.

3 Q And did you say in your direct testimony that only five  
4 to ten percent of people who have small cell carcinoma live  
5 two years or more?

6 A That is right.

7 MR. MANNINO: Your Honor, if I could have a moment  
8 to review -- brief recess to review the medical records.

9 THE COURT: All right.

10 (Pause in the proceedings.)

11 MR. MANNINO: Doctor, do you mind if we mark your  
12 original notes?

13 THE WITNESS: How badly do you intend to mark them?

14 THE COURT: You're going to put a number on the  
15 top, aren't you?

16 MR. MANNINO: That's right.

17 May we do that, with your name?

18 THE WITNESS: Sure.

19 THE COURT: Yes. But don't underline or --

20 MR. MANNINO: I'm not. I'm going to call the first  
21 one D-Stoloff 1 and the second one D-Stoloff 2. And, your  
22 Honor, if I may approach the witness, this will be really --

23 THE COURT: Yes.

24 MR. MANNINO: -- all that I have, but I would like  
25 him to read certain things in.

1 BY MR. MANNINO:

2 Q Would you read, Doctor, from Exhibit --

3 MR. JOHNSON: May I approach, your Honor, so I can  
4 see what is being read?

5 THE COURT: Yes, you certainly may.

6 BY MR. MANNINO:

7 Q Doctor, could you read into the record starting with try  
8 Nicorette, for those four lines.

9 A Well, these aren't my notes.

10 Q These are not your notes?

11 A No.

12 Q Well, whose notes are those?

13 A I don't know.

14 Q They were produced in your --

15 A You're showing me. You have my notes.

16 Q Whose notes are these? Those were just produced to us  
17 as the originals of your records. Those are not your  
18 notes?

19 A Well, I didn't write this. You're holding my notes.

20 Q All right. Well, then D-Stoloff 1 which was just given  
21 to us as the originals of your notes, apparently are not --

22 MR. JOHNSON: Excuse me, your Honor. I think what  
23 this is, is something that was prepared by Mr. Mannino's  
24 assistant, and I --

25 MR. MANNINO: No, no.

1 MR. JOHNSON: May I show the Court why?

2 THE COURT: Yes.

3 MR. MANNINO: It was just handed to us, Mr.

4 Johnson.

5 (Brief pause in the proceedings.)

6 THE COURT: It's a little too early for lunch, but  
7 will you excuse yourselves for a few minutes, please. It  
8 won't take very long.

9 (Jury out of the courtroom.)

10 THE COURT: And what were the -- could I see the  
11 two pages that were handed -- that you got just today,  
12 please.

13 MR. MANNINO: We got more than two, your Honor.

14 THE COURT: These are the two pages that you got  
15 today, right?

16 MR. MANNINO: No, we got more than that today.

17 THE COURT: Well, the ones that you hadn't seen  
18 before.

19 MR. MANNINO: Yes, there were more than two pages.

20 MR. JOHNSON: That looks a lawyer's note, your  
21 Honor.

22 (Discussion off the record.)

23 (Jury in the courtroom.)

24 THE COURT: Members of the jury, the reason we had  
25 such a short recess is we straightened out the matter very



1 quickly. One page was the doctor's original notes, and one  
2 page was the original notes of one of the lawyer's  
3 commenting on the notes. So we've renumbered Stoloff-2 as  
4 Stoloff-1, and we're now ready to proceed.

5 BY MR. MANNINO:

6 Q Doctor, now that we've straightened out that confusion,  
7 could you read into the record -- I'm going to ask you to do  
8 two things, in the middle of the page and at the bottom of  
9 the page. Perhaps we could start at the bottom of the page  
10 and just for purposes of -- of clarity, read that last full  
11 paragraph into the record.

12 A Smoking. Unable to stop smoking. Tried to stop after  
13 the first diagnosis of cancer. Craves, meaning craves  
14 cigarettes, unable to stop more than one hour. He's not a  
15 chain smoker, nervous if not smoking, tried Nicorette  
16 without success for one week. Said he was anxious, hooked  
17 on cigarettes. Understood the risk of smoking. No other  
18 addictions, able to control alcohol.

19 Q And, Doctor, in the middle of the page, I'm going to ask  
20 you to, if I may point, to read this into the record, those  
21 two lines.

22 A Smoking age ten to present, two packs per day, six to  
23 eight cans of beer a day, alcohol mild intake, this is what  
24 he considered mild, history, heavier at times, four shots of  
25 whiskey, I think he meant.

1 Q When it says two packs a day, did you cross out one to  
2 two, did you cross out the one that --

3 A I don't remember what I did. But you have to understand  
4 these are notes taken while we were taking to a patient  
5 without thought of any legal proceedings two years later.  
6 So, I don't know what I did there, but it says two packs a  
7 day.

8 Q Actually at that time you knew that you were being asked  
9 by a lawyer to examine him?

10 A I didn't -- I didn't think you would stand next to me in  
11 Federal Court and ask me whether I crossed something out.  
12 That's what I am saying.

13 Q Is that a new experience for you, Doctor, a lawyer  
14 looking at your notes in Federal Court?

15 MR. JOHNSON: Objection, your Honor.

16 THE WITNESS: I don't do it every day.

17 THE COURT: Well, I'll sustain the objection.

18 MR. MANNINO: That's all I have, your Honor. Thank  
19 you, Doctor.

20 THE COURT: Is there any redirect?

21 MR. JOHNSON: Briefly, your Honor, yes.

22 REDIRECT EXAMINATION

23 BY MR. JOHNSON:

24 Q Doctor, with respect --

25 THE COURT: Briefly, everybody does everything

1 briefly. Well, that will go without saying. Okay.

2 MR. JOHNSON: Your Honor, I'll be happy to agree  
3 that whenever a lawyer says briefly, including me and Mr.  
4 Mannino, that that is somewhat longer than most people think  
5 of as briefly.

6 THE COURT: Well, the same is usually true judicial  
7 declared recesses, so we're all guilty of using the word  
8 brief somewhat.

9 MR. JOHNSON: Yes, your Honor.

10 THE COURT: As other people don't. But would you  
11 ask your questions now.

12 BY MR. JOHNSON:

13 Q With respect to Mr. Gunsalus' work history at Sun Ship,  
14 would you look at the detailed occupational history provided  
15 to you by my office.

16 A Yes.

17 Q How many occasions does it indicate he worked at Sun  
18 Ship?

19 A 1948 Sun Oil Company. Let's see. He worked as a mess  
20 man and wiper aboard ships in engine rooms, which were  
21 insulated with asbestos containing materials. 1948 to '49,  
22 Sun Shipbuilding and Dry Dock Company. 1960 to '62, same.

23 Q And is there also a listing for 1974?

24 A Yeah. Laborer, machinist helper, stage builder,  
25 fabricator and crane operator. Plaintiff worked on board

1 ships in both engine and fire rooms, and in No. 66 shop.  
2 Worked around pipefitters, ladders, electricians on board  
3 ships, and in the shop. Was constantly exposed to the  
4 asbestos containing materials, with which they worked.

5 Q Now, Doctor, would you take a look at your report in  
6 this case.

7 MR. MANNINO: Your Honor, I'm going to object to  
8 the use of the report. It was not gone into on direct and  
9 this is redirect.

10 MR. JOHNSON: Well, on cross --

11 THE COURT: You could only ask questions that refer  
12 to the cross. If he needs his report to refresh his  
13 recollection, he may use it. But you can't introduce the  
14 report, of course.

15 THE COURT: Fine.

16 BY MR. JOHNSON:

17 Q You were asked by Mr. Mannino about the survival rate  
18 for small cell cancer of the lung. In your report, did you  
19 express an opinion on that subject?

20 A Yes, I did.

21 Q Over what time period?

22 A Well, I have to refer to it. In the report I said the  
23 five year survival --

24 THE COURT: No, just answer the question. You can  
25 refer to the report, but if you'll answer the question,

1 which was, over what time period.

2 BY MR. JOHNSON:

3 Q Over what time period was that?

4 A It's a five year survival.

5 Q And what percentage was that?

6 A Five percent.

7 MR. JOHNSON: Your Honor, if I may just have a  
8 second.

9 No further questions.

10 THE COURT: I believe --

11 RECROSS EXAMINATION

12 BY MR. MANNINO:

13 Q Doctor, can we agree that the occupational exposures  
14 that you just read into the record for Mr. Johnson, come  
15 from documents that he prepared as opposed to documents or  
16 testimony or narration that Mr. Gunsalus gave you?

17 A No, I asked Gunsalus what his work history was, and this  
18 substantiates pretty much what he told me.

19 Q The document you were just referred to, however, was a  
20 document prepared by Mr. Johnson's office?

21 A That is correct.

22 MR. MANNINO: Thank you.

23 THE COURT: You're excused, Dr. Stoloff. Thank you  
24 very much.

25 (Witness excused.)

1 THE COURT: Next witness.

2 MR. JOHNSON: Your Honor, I call Angela Paone.

3 THE COURT: I'm sorry, I couldn't hear you.

4 MR. JOHNSON: Angela Paone.

5 MR. MANNINO: Again, your Honor, we'd like to

6 approach the bench, if we could.

7 (Sidebar discussion as follows:)

8 THE COURT: Who is Angela --

9 MR. MANNINO: Well, that's what I want --

10 THE COURT: What's her last name?

11 MR. JOHNSON: Miss Paone, P-A-O-N-E.

12 MR. MANNINO: Your Honor, we took her deposition.

13 She lived in the Gunsalus house until '67.

14 THE COURT: Yes.

15 MR. MANNINO: In every issue in the case, she said

16 she didn't know anything about it so I'd like an offer of

17 proof --

18 THE COURT: All right. What is the offer of proof.

19 MR. JOHNSON: The offer of proof is that she was in

20 the Gunsalus house for a period of time during the early

21 '60s, that Mr. and Mrs. Gunsalus basically helped raised her

22 through her teenage years.

23 THE COURT: Yes.

24 MR. JOHNSON: That she -- that Mr. Gunsalus to her

25 -- as far as her knowledge was concerned was employed at the